

OPINION
56-38

May 7, 1956 (OPINION)

COUNTY COMMISSIONERS

RE: Vacancy - Filing of Unexpired Term

In your letter of March 8, 1956, as received by this office on May 2, 1956, you request an opinion as to whether a county commissioner elected in the 1954 General Election is to serve two or four years. You point out that the commissioner elected for a four year term in 1952 died and that a new commissioner was appointed to fill this vacancy until the 1954 General Election, at which election the commissioner about whom you are concerned gained office.

Section 44-0205 of the Code, so far as pertinent, provides as follows:

"When a vacancy occurs in the Board of county commissioners, the remaining members of the board, with the county judge and auditor, immediately shall appoint some suitable person to fill such vacancy from the district in which such vacancy occurred. . . . The appointee shall hold office until his successor is elected at the next general election and qualified."

Section 11-1103 of the Code provides: "A county commissioner shall hold his office for the term of four years except as otherwise provided in this title."

Section 11-0207 provides for the staggering of commissioner's terms. Reading all these statutes together, it becomes apparent that the Legislature intended one in the position of the commissioner about whom you inquire to merely fill the unexpired term of the commissioner elected for a four year term in the 1952 election. Thus the commissioner elected in 1954 should only serve two years, until 1956. Any other conclusion would defeat the intent of the Legislature so far as staggering the terms is concerned.

LESLIE R. BURGUM

Attorney General